

REMARKS

(Preamble) This is a response to the Office Action dated February 12, 2004, and the Communication (Paper 22) dated May 3, 2004, in this Application. Numbered Sections 1-4 below correspond to the numbered Sections 1-4 of the Office Action of February 12, 2004, and are followed by Section 5, Applicants' statement of the Substance of Telephonic Interviews with the Examiners concerning this Application; Section 6, General Comments; and Section 7, Conclusion.

Claims 1-43 are now presented. No claim is currently amended. The text of the currently pending claims can be found in the Listing of Claims at Pages 2-9 of the Amendment filed November 14, 2003.

TRAVERSAL OF REJECTION

1. All rejections in the Office Action dated February 12, 2004, are based on 35 USC 103(a). All rejections rely on Gager et al. U.S. Patent 6,222,442 B1, in view of other references. Gager U.S. Patent 6,222,442 B1 and other references were applied in the Office Action of May 14, 2003, and in response to the rejections based on Gager, Applicants filed Declarations Under 37 CFR 1.131 on November 14, 2003, showing that Applicants completed their invention before January 28, 1999. The Examiner has not commented on the Declarations. Accordingly, Gager should not be applied as a reference, and the rejections should all be withdrawn.

2. Claims 1, 5-12, 14 and 27-29 (but *not* Claim 15) are rejected under 35 USC 103(a) as unpatentable over (obvious in view of) Gager et al. U.S. Patent 6,224,442 B1 (*sic*, should be 6,222,442 B1), issued April 24, 2001, based on an application filed March 29, 1999, in view of Sonderegger et al. U.S. Patent 5,920,057, issued July 6, 1999. The Examiner provides detailed comments as to how Gager and Sonderegger are alleged to teach or suggest the subject matter of Claims 1, 5-12, 14, 15 and 27-29, but not in that order.

Gager U.S. Patent 6,222,442 B1 and other references were applied in the Office Action of May 14, 2003, and in response to the rejections based on Gager, Applicants filed Declarations Under 37 CFR 1.131 on November 14, 2003, showing that Applicants completed their invention

before January 28, 1999. Accordingly, Gager should not be applied as a reference, and the rejection should be withdrawn.

3. Claims 2-4, 16-26 and 30-43 are rejected under 35 USC 103(a) as unpatentable over (obvious in view of) Gager in view of Sonderegger, and further in view of Federspiel U.S. Patent 5,464,369. The Examiner provides detailed comments as to how Gager, Sonderegger and Federspiel are alleged to teach or suggest the subject matter of Claims 2-4, 16-26 and 30-43, but not in that order.

Gager U.S. Patent 6,222,442 B1 and other references were applied in the Office Action of May 14, 2003, and in response to the rejections based on Gager, Applicants filed Declarations Under 37 CFR 1.131 on November 14, 2003, showing that Applicants completed their invention before January 28, 1999. Accordingly, Gager should not be applied as a reference, and the rejection should be withdrawn.

4. Claim 13 is rejected under 35 USC 103(a) as unpatentable over (obvious in view of) Gager in view of Sonderegger, and further in view of Nesbitt U.S. Patent 6,150,927. The Examiner provides detailed comments as to how Gager, Sonderegger and Nesbitt are alleged to teach or suggest the subject matter of Claim 13.

Gager U.S. Patent 6,222,442 B1 and other references were applied in the Office Action of May 14, 2003, and in response to the rejections based on Gager, Applicants filed Declarations Under 37 CFR 1.131 on November 14, 2003, showing that Applicants completed their invention before January 28, 1999. Accordingly, Gager should not be applied as a reference, and the rejection should be withdrawn.

APPLICANTS' STATEMENT OF SUBSTANCE OF INTERVIEWS

5. Upon receipt of the Office Action of February 12, 2004, I immediately reviewed the Office Action and noted three irregularities, as discussed below.

On or about **March 1, 2004**, a telephone interview was held between Examiner Davetta Woods Goins and the undersigned attorney, Raymond W. Green, the courtesy of which is noted with appreciation. Examiner Goins acknowledged (1) that she intended to reject Claim 15 in

Section 2 of the Office Action of February 12, 2004; and (2) that the number of the Gager Patent as recited in Section 2 was in error, in that "6,224,442 B1" should read "6,222,442 B1", the Gager Patent of record. Examiner Goins was asked (3) why the Gager Patent was being applied in the Office Action of February 12, 2004, when Applicants had filed Declarations Under 37 CFR 1.131 on November 14, 2003, showing that Applicants completed their invention before January 28, 1999. Examiner Goins said she would have to check the file to see why the Gager Patent was still being applied.

On or about **March 9, 2004**, a second telephone interview was held between Examiner Davetta Woods Goins and the undersigned attorney, Raymond W. Green, the courtesy of which is noted with appreciation. Examiner Goins explained that the rejection in the Office Action of February 12, 2004, had been approved by a Group Director [although the reason for the approval was not discussed, it was understood to be because of the policy of MPEP § 2307.02], and accordingly, the Group Director would need to be involved in undoing it. Examiner Goins stated that "we know we cannot use the Gager reference", but that a decision had not yet been made what action should be taken in the case instead (*i.e.*, allowance, application of another reference, or whatever). Examiner Goins stated that a decision on the next course of action should be made later that day.

On or about **March 9, 2004**, later in the day, a third telephone interview was held between Examiner Davetta Woods Goins and the undersigned attorney, Raymond W. Green, the courtesy of which is noted with appreciation. Examiner Goins was understood to state that the Office Action of February 12, 2004, would be vacated, and an Examiner's Interview Summary would be sent in support of the action vacating the Office Action.

On or about **April 14, 2004**, a fourth telephone interview was held between Examiner Davetta Woods Goins and the undersigned attorney, Raymond W. Green, the courtesy of which is noted with appreciation. Examiner Goins stated that the Application was being reviewed by her supervisor, and that we should receive an action in the Application by the next week (*i.e.*, by April 23, 2004).

On or about **April 27, 2004**, a fifth telephone interview was held between Examiner Davetta Woods Goins and the undersigned attorney, Raymond W. Green, the courtesy of which is noted with appreciation. Examiner Goins stated that she was still waiting for word from the

Group Director (as to what action should be taken next in the Application), and that we could submit a short response to the Office Action of February 12, 2004, in response to which she could vacate the Office Action of February 12, supported by an interview summary; *or*, she could vacate the Office Action without a written response to the Office Action. I stated that I would prefer that the Office Action just be vacated (as improperly primarily based on a reference that had been antedated under 37 CFR 1.131), and I understood that that action would be taken.

On or about **April 27, 2004**, later in the day, a telephone message was left for Examiner Daniel Wu, Examiner Goins' supervisor, requesting a telephone interview in order that I might understand Examiner Wu's position in this Application. Still later in the day, a telephone message was left for Examiner Goins, advising her of the message left for Examiner Wu.

On or about **April 28, 2004**, a telephone interview was held between Examiner Daniel Wu and the undersigned attorney, Raymond W. Green, the courtesy of which is noted with appreciation. Examiner Wu stated that he was unsure that the Declarations Under 37 CFR 1.131 filed in this Application were sufficient to antedate the Gager Patent; and that Examiner Goins was not in the Office that day; but that he would ask her to further review the Declarations Under 37 CFR 1.131 the next day. Examiner Wu stated that the situation regarding the present Application is complicated by the fact that there is the possibility of an interference involving this Application. I stated that the Miller Patent 6,130,614, claims of which have been substantially copied in this Application for purpose of interference, was currently undergoing reexamination (Control No. 90/006,690); that reexamination had been ordered; that a Patent Owner's Statement and an Amendment (but no Declarations Under 37 CFR 1.131) had been filed on behalf of the Patent Owner; that a Reply to the Patent Owner's Statement had been filed by the Reexamination Requester; that an Office Action in the Reexamination was awaited; and that depending on the outcome of the Reexamination, an interference may not be necessary. Examiner Wu stated that he would look into the reexamination. I suggested that the Office Action of February 12, 2004, could just be vacated (as improperly primarily based on a reference that had been antedated under 37 CFR 1.131), and a decision could be made later, as to what should be done next in this Application. I understood that that action would be taken.

On May 3, 2004, Paper 22 in this Application was mailed. Rather than vacating the Office Action of February 12, 2004, Paper 22 states (implicitly) that a written response to the

Office Action of February 12, 2004, should be filed, and that the written response should include a statement of the substance of the Interview. Accordingly, the present APPLICANTS' STATEMENT OF SUBSTANCE OF INTERVIEWS is filed as part of this REQUEST FOR RECONSIDERATION.

GENERAL COMMENTS

6. The Office Action of February 12, 2004, is manifestly improper. Gager U.S. Patent 6,222,442 B1 and other references were applied in the Office Action of May 14, 2003, and in response to the rejections based on Gager, Applicants filed Declarations Under 37 CFR 1.131 on November 14, 2003, showing that Applicants completed their invention before January 28, 1999. Accordingly, Gager should not be applied as a reference, and the rejections based on Gager should all be withdrawn. Alternatively, if there is some shortcoming in the Declarations Under 37 CFR 1.131 filed in this Application, that shortcoming should be addressed. The Office Action of February 12, 2004, however, does not accept or reject the showing made, and does not even acknowledge the Declarations Under 37 CFR 1.131 filed in this Application.

With respect to the action promised in Paper 22 (either a rejection or allowance after full consideration of the Declarations Under 37 CFR 1.131 filed in this Application), attention is drawn to a third possible action, namely declaration of interference with the Miller '614 Patent, claims of which have been substantially copied in this Application for purpose of interference. Miller '614 is still undergoing reexamination (Control No. 90/006,690), in which two Office Actions were issued on May 3, 2004, one noting deficiencies of the Amendment filed November 14, 2004, and requiring a one-month response, the other rejecting all claims and requiring a two-month response. Depending on the outcome of the Reexamination, an interference may not be necessary; but issuance of the present application without some resolution of the interference question is believed to be improper.

CONCLUSION

7. Reconsideration and withdrawal of the outstanding rejections are courteously requested. If the claims of the Miller '614 Patent are cancelled via reexamination, this

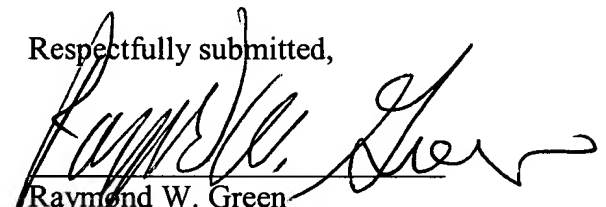
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Reply to Office Action Dated February 12, 2004

Application should be in condition for allowance. If the claims of the Miller '614 Patent survive reexamination, however, interference may be appropriate.

Accordingly, all of Applicants' claims now presented, namely Claims 1-43, appear to be in condition for allowance, subject to a possible interference with Miller et al. U.S. Patent 6,130,614, if the Miller '614 Patent survives reexamination.

Such action is courteously requested.

Respectfully submitted,



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